ing, held to support verdict for plaintiff, and to prevent reversal under Code 1919, § 6303.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

Error to Circuit Court, Tazewell County.

Action by V. L. Burress against the Appalachian Power Company. From a judgment for plaintiff, defendant brings error. Affirmed.

R. E. Scott, of Richmond, for plaintiff in error.
Greever & Gillespie, of Tazewell, for defendant in error.

COLLINS *v.* CITY OF RADFORD.

Sept. 21, 1922.

[113 S. E. 735-736.]

1. Municipal Corporations (§ 642 (3)*)—Motion to Quash Warrant Held General.—A statement in the record that defendant made a motion in the corporation court to quash the warrant for error apparent upon its face, but assigned no other ground therefor, obviously means that the motion was general.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 611.]

2. Municipal Corporations (§ 639 (1)*)—Warrant Charging Violation of Prohibition Ordinance Not Fatally Defective.—A warrant for unlawfully transporting, etc., and attempting to transport, ardent spirits, which showed that it emanated in the city of Radford for an offense committed within the city limits, and was issued and to be tried by the police justice of the city, whose jurisdiction as to such offenses was expressly confined to violations of city ordinances by Acts 1920, c. 196, and Acts 1918, c. 388, § 24, was not seriously irregular or defective, though it did not specifically charge that the acts were in violation of a city ordinance, and concluded in the name of the commonwealth instead of the city; especially where a bill of particulars was called for and furnished showing that the proceeding was by the city.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 655.]

3. Municipal Corporations (§ 639 (2)*)—Ordinances Need Not Be Pleaded or Proved in Case Originating in Municipal Court.—In a criminal proceeding originating in a municipal court of exclusive jurisdiction, it is not necessary in that court, or in the state court to which the case is taken by appeal for trial de novo, to plead or prove the ordinance on which the proceeding is based.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 642.]

4. Municipal Corporations (§ 642 (1)*)—General Motion to Quash

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Warrant Unavailing after Verdict unless Accused Prejudiced.—Under Code 1919, § 4990, requiring appeals to corporation courts to be conducted without formal pleadings, and section 4989, authorizing amendments, a general motion to quash a warrant on appeal, pointing out no specific objection, cannot avail unless it appears from the record that accused was or could have been prejudiced thereby.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

5. Indictment and Information (§ 203*)—Regularity of Judgment Not Affected by Invalidity of One Count.—Where there was no demurrer to the warrant, and no motion to instruct the jury to disregard the first count, and there was a general verdict of guilty which might have been found under the second count, the regularity of the judgment was not affected, in view of Code 1919, § 4923, though the first count was bad.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 446.]

6. Municipal Corporations (§ 642 (4)*)—Failure to Charge Attempt to Unlawfully Transport Spirits Not Prejudiced in View of Evidence.—The failure of a warrant for attempting to transport ardent spirits in violation of an ordinance to charge that the attempt was to unlawfully transport them was not prejudicial where the evidence showed that the act attempted was clearly unlawful.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 655.]

7. Municipal Corporations (§ 639 (1)*)—Warrant Need Not Charge Attempt Was to Unlawfully Transport Ardent Spirits.—Under Acts 1918, c. 388, §§ 3, 3a, making it unlawful to transport or attempt to transport ardent spirits, except as hereinafter provided, section 60b, placing the burden on accused to prove any exception, and Acts 1922, c. 345, § 27, under which a prohibition ordinance must follow the state law, a warrant for attempting to transport ardent spirits in violation of an ordinance is not invalid for failure to charge that the attempt was to "unlawfully" transport them.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 655.]

8. Indictment and Information (§ 111 (3)*)—Only Exceptions and Provisos Essential to Description Need Be Negatived. — Only such exceptions and provisos as are essential to a description of the offense need be negatived without reference to their position in the statute; and it is not necessary to negative an exception in a subsequent section which is merely referred to in the enacting clause, and is not a necessary part of the definition of the offense.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 412.]

9. Intoxicating Liquors (§ 198*)—Warrant for Attempt to Transport Need Not Set Out Specific Acts.—A warrant charging an attempt to transport ardent spirits need not set out or specify acts constituting the attempt, especially in view of Acts 1918, c. 388, § 3a, pro-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

viding for conviction of attempt under an indictment for the completed offense.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 655.]

10. Intoxicating Liquors (§ 138*)—Attempt to Transport Ardent Spirits Will Support Prosecution.—Under Acts 1918, c. 388, § 3a, making it unlawful to attempt to do any of the things prohibited by that act, an attempt to transport ardent spirits, is a sufficient foundation for a prosecution and conviction.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

11. Intoxicating Liquors (§ 138*)—Acts Held to Constitute Attempt to Transport Spirits.—Where one who had arranged that whisky should be left for him in a haystack went there intending to carry it away, and reached into the place where it had been, and was feeling for it, he was guilty of an attempt to transport ardent spirits, though the whisky had previously been removed by others.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

12. Criminal Law (§ 1171 (1)*)—Erroneous Statement of Law in Argument Held Harmless in View of Evidence.—On a trial for attempting to transport ardent spirits which defendant went after for the purpose of transporting, but failed to find, the argument of the prosecuting attorney that, if he thought the liquor was there, and had previously made arrangements for it to be put there, and went after it, he was guilty though the liquor had never been put there, if treated as an interpretation of the instructions, and as such erroneous, could not have prejudiced defendant where the evidence showed that the whisky had been placed there.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 597.]

Error to Corporation Court of Radford.

Albert L. Collins was convicted of an offense, and he brings error. Affirmed.

V. M. Sowder, of Christiansburg, and R. L. Jordan, of Radford, for plaintiff in error.

H. C. Tyler, of East Radford, for defendant in error.

WAMPLER et al. *v.* CORPORATION OF NORTON.

Sept. 21, 1922.

[113 S. E. 733.]

1. Intoxicating Liquors (§ 236 (5)*)—Finding of Liquor Held to Support Conviction for Keeping with Intent to Sell.—Under Acts 1918, c. 388, § 28, creating a prima facie presumption of a violation by the occupant of premises on which ardent spirits is found, the finding of such spirits sustained a conviction as to the occupant of the premises, notwithstanding the possibility that some other person might be guilty.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 35.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.